

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	8:00CR193
Plaintiff,)	
)	
vs.)	MEMORANDUM AND ORDER
)	
ROGELIO MERCADO,)	
)	
Defendant,)	

This matter is before the court on filing no. 117, the Motion Seeking Leave to Withdraw § 2255 motion, filed by the defendant, Rogelio Mercado. Construing filing no. 117 as a motion for voluntary dismissal of the defendant's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (filing no. 112), pursuant to Fed. R. Civ. P. 41(a),¹ I will grant the requested dismissal without prejudice.

THEREFORE IT IS ORDERED:

1. That filing no. 117, the motion by the defendant Rogelio Mercado, for voluntary dismissal of his § 2255 motion, is granted, and the defendant's § 2255 motion (filing no. 112) is dismissed without prejudice at the defendant's request.

2. That a separate judgement will be entered in accordance with this order.

DATED this 6th day of July, 2005.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
UNITED STATES DISTRICT JUDGE

¹ Rule 12 of the Rules Governing § 2255 Proceedings for the United States District Courts states:

If no procedure is specifically prescribed by these rules, the district court may proceed in any lawful manner not inconsistent with these rules, or any applicable statute, and may apply the Federal Rules of Criminal Procedure or the Federal Rules of Civil Procedure, whichever it deems more appropriate, to motions filed under these rules.